IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 43 OF 2006

1. Shri Laxman Ladu Raut,
   Major of age,
   Residing at H. No.181,
   Mahalwada, Sal, Bicholim Goa.

2. Shri Mangaldas K. Gawas,
   Chairman of Navelim,
   Vivid Karyakari,
   Shakari Seva Society Ltd.,
   Bicholim, Goa. ... Petitioners

V e r s u s

1. Union of India,
   through the Secretary,
   Ministry of Agriculture,
   Department of Agriculture and
   Co-operation, Krishi Bhawan,
   New Delhi.

2. Shri P. Sampath,
   Director of Co-operation,
   Ministry of Agriculture,
   Department of Agriculture and
   Co-operation, Krishi Bhawan,
   New Delhi.

3. The Central Registrar,
   Co-operative Societies,
   Krishi Bhawan,
   New Delhi.

4. The Goa State Co-operative
   Bank Ltd., through its Managing
   Director, Sahakar Sankul, Patto Plaza,
   EDC Complex,
   Panaji, Goa.

5. Shri Ramchandra G. N. Mule,

6. Shri Avelino Marcos Sebastiao Silva,

7. Shri Prabhakar K. Gawas

8. Shri Vinayak K. Narvekar

9. Shri Shrikant P. Naik

10. Shri Umesh B. Shirodkar

11. Shri Mahesh Amonkar

12. Shri Prakash Velip

13. Shri Rajkumar S. Dessai

14. Shri Dadi G. Naik

15. Shri Narayan V. Mandrekar

16. Shri Ramkrishna K. Dangui

17. Smt. Vanita S. Khedekar

18. Shri Rameshbhai J. Bamania

19. Shri Mohanbhai P. Tandel

20. Shri Anand R. Naik Gaonkar

(All Directors of the Board of Goa State Co-operative Bank Ltd., Panaji, Goa) ... Respondents

Mr. A. N. S. Nadkarni and Mr. H. D. Naik, Advocates for the Petitioners.

Mr. C. A. Ferreira, Assistant Solicitor General for the Respondent Nos.1 to 3.

Mr. S. K. Kakodkar, Senior Advocate with Mr. Rama Rivankar, Advocate for the Respondent Nos.5, 6, 7, 9, 10 and 11.

Mr. S. N. Joshi, Advocate for the Respondent No.4.

Mr. S. N. Sawaikar, Advocate for the Respondent Nos.12. 13 and 14.

Mr. A. Kansar, Advocate for the Respondent No.15.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 25TH APRIL, 2007.

JUDGMENT (PER *N. A. BRITTO, J.*)

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners assail the letter/communication dated 20-12-2005 issued by the Director(Co-operation) with the approval of the Central Registrar of Co-Operative Societies, by which it has been clarified that the term of Office of the present Board of Directors(Respondent Nos.5 to 20) will be 5 years from the date of election(25-1-2003).

2. The petitioners have assailed the said letter essentially on the ground that it is grossly illegal, arbitrary and unauthorized since the Certificate of Registration dated 1-3-2004 had fixed the tenure of the present Board of Directors to 3 years and the tenure of 5 years was for the Board of Directors to be elected in future. The petitioners have therefore sought, interalia, for a writ of certiorari or a writ in the nature of certiorari or any other writ or order and direction to quash and set aside the said clarification contained in the said letter dated 20-12-2005 and also for a further direction to Respondent No.3-Central Registrar to appoint an Administrator to administer the affairs of respondent

no.4-Bank and to direct respondent no.3 to forthwith hold the elections for the Board of Directors of respondent no.4-Bank as the term of the present Board of Directors(Respondent Nos.5 to 20) expired on 31-1-2006.

3. Although the petitioners' challenge is limited to the said letter dated 20-12-2005 in relation to the Certificate of Amendment of Registration dated 1-3-2004, there are two other such Certificates brought into controversy, on behalf of the respondents, namely the Certificate of Registration of Amendment dated 30-9-2002 by which the Central Registrar had registered the proposed Bye-Law No.31 setting out the term of Office of the elected members of the Board from 3 years to 5 years and the Certificate of Registration of Amendment dated 21-1-2003 by which the Registration Certificate of Amendment dated 30-9-2002 was cancelled and the earlier proposed enblock amendment fixing the tenure of the Board for 3 years and that of the Chairman and Vice-Chairman also for 3 years was again fixed for 3 years and that is to say by virtue of the Bye-Laws No.31 and 35(ii) of the Bye-Laws sent for registration, on behalf of the Respondent-Bank by letter dated 17-6-2002.

4. Some more facts are required to be stated to dispose of this petition.

5. On or about 30-5-1987 on the formation of a separate State of Goa and the Union Territory of Daman and Diu, the respondent no.4 became a deemed Multi-State Co-operative Society by virtue of Section 95 of the

Multi-State Co-operative Societies Act, 1984(old Act, for short). The tenure of the Board of Directors then was for a period of 3 years and that was in view of Section 35(3) of the old Act which provided that the term Office of the elected members of the Board would be such, not exceeding 3 years from the date of election, as may be specified in the Bye-Laws of the Multi-State Co-operative Society. On or about 17-6-2002, the Respondent-Bank addressed a letter to the Central Registrar seeking registration of amendments to the Bye-Laws and there is no dispute that as per the said letter what was proposed to be registered, inter alia, was Bye-Law No.31 which provided that the term of Office of the elected members of the Board would be 3 years from the date of election or as may be provided in the Act. It also provided that the elected members would continue to hold Office till their successors were elected or nominated under the provisions of the Act or the Rules framed thereunder. Likewise Bye-Law No.35(ii) provided that the term of Office of the Chairman and Vice-Chairman should be for a period of 3 years unless removed from Office by motion of no confidence as per procedure prescribed by Sub-Clause III i.e. by virtue of a motion of no confidence at a meeting of the Board of Directors by a simple majority.

6. While the registration of the amendment sent by letter dated 17-6-2002 was pending for consideration of Respondent No.3-the Central Registrar, on 19-8-2002 the old Act was repealed and the Multi-State Co-operative Societies Act, 2002(new Act, for short) came into force and the Central Registrar registered the Bye-laws sent for approval not for 3 years as proposed by the Respondent-Bank but for 5 years and this, the Central Registrar

did, as explained by him in the reply filed, to bring into line with the provisions of the new Act which by virtue of sub-section (5) of Section 45 provided that the term of Office of the elected members of the Board should be not exceeding 5 years from the date of election, as may be specified in the Bye-Laws of the Multi-State Co-operative Society.

7. By certificate of amendment dated 21-1-2003(at page 75 of the Paper Book) the Respondent-Central Registrar cancelled the registration certificate dated 30-9-2002(at pages 65/109 of the Paper Book) and registered the enblock amendments sent by the respondent-Bank by letter dated 17-6-2002 under Section 11 of the new Act thereby reverting to the tenure of the Board of Directors and that of the Chairman and Vice-Chairman to 3 years. The elections to the present Board of Directors(respondent nos.5 to 20) were held on 25-1-2003 and they took charge on 31-1-2003. In other words, the elections to the present Board of Directors were held at a time when the Certificate of Registration dated 21-1-2003(at page 75 of the paper book) was in full force and effect i.e. providing the tenure for the Board of Directors for 3 years. Needless to say the present Board of Directors(respondent nos.5 to 20) also took charge on 31-1-2003 when the said certificate of registration dated 21-1-2003 approving a tenure of 3 years for the Board of Directors was in force. As per the Respondent-Central Registrar, as explained by him in the affidavit-in-reply, under the old Act, the Chief Director(Co-operation) in the Department of Agriculture and Co-operation was exercising the delegated powers of the Central Registrar for the approval of the Bye-Laws and amendments thereto, and while

the matter of registration of amendment to the Bye-Laws was under examination, the new Act came into existence and the Chief Director(Co-operation) under the assumption that he still enjoyed the delegated powers of the Central Registrar had issued the said Certificate of Registration dated 30-9-2002 with modification of 5 years to bring it in line with the provisions of the new Act but later it came to notice that no such powers of the Central Registrar of Co-operative Societies were delegated to the Chief Director(Co-operation) under the new Act and on reviewing all such registrations, and we are informed, by the learned Assistant Solicitor General appearing on behalf of the Central Registrar, that this was done throughout the country, issued the Certificate of Registration dated 21-1-2003 cancelling the registration to bring the situation back to the stage prevailing before 30-9-2002 i.e. providing a tenure of 3 years to the Board of Directors.

8. Faced with the said Registration Certificate dated 21-1-2003 by which the tenure particularly of the Board of Directors was reduced to 3 years the Respondent-Bank held a meeting on 28-9-2003 and framed a Bye-Law approving a tenure of 5 years for the Board of its Directors and sent the same for the approval of the Respondent-Central Registrar vide their letter dated 25-11-2003 and the same was approved by the Respondent-Central Registrar vide Certificate dated 1-3-2004(at page 76 of the Paper Book) under Section 11 of the new Act stating that the tenure of the present Board of Directors would be for a period of 3 years and that the extended tenure of 5 years would be applicable for future members of the Board of Directors as well as the Chairman

and Vice-Chairman of the Bank.

9. None of the respondents, namely Respondent No.4-Bank or Respondent Nos.5 to 20 members of the Board of Directors contested the validity of said Certificate of Registration dated 1-3-2004(at page 76 of the Paper Book) but several representations appear to have been made to the Respondent-Central Registrar and particularly a representation dated 20-10-2005 and thereafter the Central Registrar issued the impugned clarification dated 20-12-2005 by which the tenure of the present Board of Directors has been extended to 5 years.

10. The case of the petitioners is that the Certificate of Registration of Amendment dated 1-3-2004 was issued by the Respondent-Central Registrar in exercise of his statutory powers conferred under Section 11(7) of the new Act which had provided that the tenure of the present Board of Directors would be 3 years and that the tenure of 5 years would be applicable to future members of the Board of Directors and that the clarification by impugned letter dated 20-12-2005 (at page 38 of the Paper Book) is completely contrary to and against the registration of the Bye-Laws by virtue of the said Certificate of Registration dated 1-3-2004 and also the provisions of sub-section(5) of Section 45 of the new Act, in that the term of Office has to be as specified in the Bye-Laws of the Multi-State Co-operative Society.

11. Before we consider the said case of the petitioners and other rival

submissions, it is necessary to deal with three preliminary objections taken on behalf of the respondent nos.5 to 7 and 9 to 11.

12. The first is in relation to locus standi of the petitioners to maintain the present writ petition. As stated in the petition, the petitioner no.1 is a Member and share-holder of Respondent-Bank and the petitioner no.2 is a President of a Society which is also a member of the Respondent-Bank. The petitioner no.1 is also a member and a share-holder of petitioner no.2. As per the learned Senior Counsel appearing on behalf of the respondent nos.5 to 7 and 9 to 11 the Membership of the respondent-Bank consists of Co-operative Societies, Government and institutions eligible for “B” class shares as per Bye-Law No.4(ii) and individual members as per Bye-Law 7 of the Bye-Laws. As per the said respondents, there is no allegation in the petition that the petitioner no.1 is a delegate of individual members of the Bank nor there is allegation that petitioner no.2 is a representative of the Co-operative Society of which he is the Chairman. As per the said respondents, the Act and the Bye-Laws do not give the petitioners a right to voice their grievances in the General Body or to vote at the election of the Board of Directors and therefore they have no locus standi to agitate their present grievance by way of this writ petition. On behalf of the petitioners, it is contended that the petitioner no.1 is a member and share-holder of the Respondent-Bank and the petitioner no.2 is the Chairman of a Co-operative Society which is also a member of the Respondent-Bank and both have sufficient locus standi to maintain the present petition. As far as this objection is concerned, we are not inclined to agree with the learned Senior

Counsel. As per Bye-Law No.29 of the Respondent-Bank, the Board of Directors consists of not more than 21 Directors and all individual members can elect one Director and likewise Seva Societies from the Goa State are entitled to elect 4 Directors. In other words, Bye-Law No.21 relates to the composition of the Board of Directors and the constituencies for election to the Board of Directors. As seen, individual share-holders are also entitled to elect one Director to be their representative on the Board of Directors. Even if it is held that such a Director is elected by a delegate of the individual members, an individual member and share-holder though not directly but indirectly has an opportunity to express his say or cast his vote to select a delegate who in turn would elect a Director to represent them on the Board of Directors and in case such a Director was elected for a tenure of 3 years, such a member or share-holder will have certainly a right to question his continuance beyond the period of 3 years and that too by invoking the writ jurisdiction of this Court. The petitioner no.2 is the Chairman of a Co-operative Seva Society who is also a member of the respondent-Bank and being so they have necessary interest to maintain this petition. In other words, both the petitioners have locus standi to file the present petition. We must note that over the years the law in respect of locus standi in filing writ petitions has considerably advanced in this country and in view of this matter also it cannot be said that the petitioners have no locus standi to challenge the tenure of present Board of Directors beyond 3 years.

13. The next submission of the learned Senior Counsel, appearing on behalf of the said respondents, is that the petitioners have efficacious alternative

remedy under Section 84 of the new Act. As per the said respondents, the dispute raised by the petitioners is in substance a dispute touching the constitution and management of the Respondent-Bank and/or in connection with the election of the Officers of the Bank and therefore the said dispute is required to be referred to and decided by an Arbitrator to be appointed by the Central Registrar in terms of sub-section(4) of Section 84 of the new Act. Referring to the definition of Section 3(t) of the new Act, it is contended that a Member of the Board of Directors is also included in the expression of Officer, as defined by Section 3(t) of the Act. Referring to Section 3(b) it is submitted that the Board means the Board of Directors or the governing body of a Multi-State Co-operative Society to which the management of the Society is entrusted. It is submitted that there are no restrictions on the powers of the Arbitrator, appointed in terms of sub-section(4) of Section 84 of the new Act to grant relief and all that he is required to follow are the provisions of the Arbitration and Conciliation Act, 1986 as provided by sub-section(5) of Section 84 of the Act. It is further submitted that acting quasi judicially the Arbitrator will not and ought not to be, influenced by the impugned letter of the Central Registrar which is purely an administrative order. It is also submitted that the period of limitation for referring such dispute of arbitration is also not over. On the other hand, it is submitted on behalf of the petitioners that the impugned order/letter dated 20-12-2005 cannot be challenged nor can it be made the subject matter of a dispute under Section 84 of the said Act. It is also submitted that a Co-operative Society is required to be managed and its affairs conducted in accordance with the provisions of the new Act and that by the impugned letter dated 20-12-2005 the Director(Co-

operation) has defied the provisions of sub-section(5) of Section 45 of the Act and therefore the petitioners are before this Court seeking for an appropriate writ and consequently and order directing the holding of elections in terms of the provisions of the new Act. Reliance has been placed on behalf of the petitioners on ***K. Venkatachalam*** *v.* ***A. Swamickan and another*** *(1999 4 SCC 526)*, particularly para 20 thereof which we have perused and which in our view has no relevance to the facts of this petition. Although, we are inclined to agree with the contention of the learned Senior Counsel that the present dispute is a dispute touching the constitution and management of the Respondent-Bank which would be required to be settled by an Arbitrator in terms of sub-sections (3) and (4) of Section 84 of the new Act we are unable to entertain this objection for reasons more than one. Firstly, this objection was not raised before the petition was admitted by Order dated 22-2-2006 and is otherwise not taken in the return filed on behalf of the said respondents. As stated by the Apex Court in the case of **S. S. Sharma and others v. Union of India and others** (AIR 1981 SCC 588) in a Writ Petition, the Courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. It is not that justice should be available to only those who approach the Court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the

principles of natural justice hold it entitled, of adequately preparing its response. Nevertheless since the petition was admitted and Rule issued, we are inclined to dispose off the same on merits. Moreover, referring the parties to arbitration at this stage, will give respondent Nos.5 to 20 an added advantage to complete their tenure of 5 years which they are not entitled to. In this context reference could be made to the decision reported in **K. Venkatachalam** v. **A. Swamickan and another**(supra) wherein the Apex Court has observed that Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. Moreover, in our view, the Arbitrator to be appointed by the Central Registrar in terms of sub-section(4) of Section 84 of the new Act may not be the right person to decide a dispute of the present nature particularly when it relates to the very clarification given by the said Central Registrar that the tenure of the present Board of Directors would be for a period of 5 years. Further, having regard to the scope of the jurisdiction of the Arbitrator which is restricted to the nature of disputes delineated in sub-sections(1) and (2) of Section 84 we are of the view that the Arbitrator would not have the power to quash and set aside the impugned order of the Central Registrar which is in the nature of a clarification. We are therefore not inclined to entertain this objection as well.

14. The third objection taken by the learned Senior Counsel appearing on behalf of the said Respondents is that the petition is liable to be dismissed for suppression of vital facts and making false statements. It is their contention that the petitioners have not exhibited the Bye-Laws registered by the Certificate of Registration dated 30-9-2002 and that the petition contains false statements that the said Bye-Laws provided for a term of 3 years for the Board of Directors when actually it was for 5 years. Reliance has been placed on **Bharat Singh and others** v. **State of Haryana and others**((1988) 4 SCC 534). In this case, in para 13, on which reliance has been placed on behalf of the said respondents by the learned Senior Counsel it is stated that there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. This decision is hardly of any relevance to the point sought to be canvassed on behalf of the said respondents. Nevertheless, it is an admitted position that the Bye-Laws which were sent for registration had proposed a tenure of 3 years to the Board of Directors of the respondent-Bank and it is the Central Registrar who registered the said Bye-Laws by Certificate of Registration dated 30-9-2002 thereby giving a tenure of 5 years. This position can be seen from para 8 of the affidavit-in-reply dated 20-2-2006(at page 42 of the Paper Book) wherein it is stated that though the respondent-Bank had sought Registration of the Certificate with Bye-Laws providing for a term of 3 years, the Chief Director(Co-operation) granted the certificate dated 30-9-2002

providing for 5 years term to the Board of Directors and also to a Chairman or Vice-Chairman of the said Board.

15. As observed earlier the Certificate dated 30-9-2002 was itself revoked by the Certificate dated 21-1-2003, thus providing for a term of 3 years.

16. In this view of the matter, we do not find that the petitioners had made such false statements or suppressed such vital facts which would entail the dismissal of the writ petition. This objection also needs to be rejected.

17. Before reverting to the merits of the petition and the rival submissions made, it may be stated that Section 9 of the old Act provided and Section 11 of the new Act now provides for amendment of the Bye-Laws of a Multi-State Co-operative Society and sub-section(1) of both the aforesaid Sections states that no amendment of any Bye-Law of a Multi-State Co-operative Society shall be valid unless such amendment has been registered under the Act. Sub-Section(3) of Section 9 of the old Act provided that the Central Registrar shall forward to the Multi-State Co-operative Society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered. Sub-Section (8) of Section 11 of the new Act provides that the Central Registrar shall forward to the Multi-State Co-operative Society a copy of the registered amendment together with a certificate signed by him within a

period of one month from the date of registration thereof and such certificate shall be conclusive evidence that the amendment has been duly registered. The proviso below sub-section(9) of Section 11 of the new Act, which otherwise we are not concerned with, provides that in case the application was not disposed of within a period of 3 months or the Central Registrar fails to communicate the order of refusal during that period the application shall be deemed to have been accepted for registration and the Central Registrar shall issue Registration Certificate in accordance with the provisions of this Act. In terms of Section 10 of the old Act and Section 12 of the new Act an amendment of the Bye-Laws of a Multi-State Co-operative Society, shall unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered. As a necessary corollary, when an amendment is cancelled, the cancellation should also come into force on the day when it is cancelled.

18. There is no dispute that until 17-6-2002 when the proposal was sent by the respondent-Bank for registration of its Bye-Laws with a tenure of 3 years to its Board of Directors as well as to the Chairman and Vice-Chairman, the Board of Directors of the respondent-Bank always had a tenure of 3 years and that was in accordance with the provisions of sub-section(3) of Section 35 of the old Act. The new Act by virtue of sub-section(5) of Section 45 provided that the term of Office of the Board of Directors should be such, not exceeding 5 years from the date of elections, as may be specified in the Bye-Laws of the Multi-State Co-operative Society. This was only an enabling provision. If at all the Respondent-Bank by virtue of its communication dated 17-6-2002 sought a

tenure of 3 years to its Board of Directors, the respondent-Central Registrar registered the Bye-Laws granting a tenure of 5 years, as per the Certificate of Registration of Amendment dated 30-9-2002(at page 65/109 of the Paper Book) and subsequently cancelled the same by Certificate of Registration of Amendment dated 21-1-2003(at page 75 of the Paper Book) and restored the tenure of 3 years by registering the enblock amendments to the Bye-Laws sent earlier by letter dated 17-6-2002. The Certificate of Registration of Amendment dated 1-3-2004 was granted after the amendments were carried out to the Bye-Laws by the present Board of Directors and sent for approval to the Respondent-Central Registrar by letter dated 25-11-2003. These Bye-Laws made a provision for a tenure of 5 years but the same were registered by the Respondent-Central Registrar by stating that the tenure of the present Board of Directors would be 3 years and that the period of 5 years would be applicable to the future Members of the Board of Directors besides the Chairman and Vice-Chairman of the Respondent-Bank. The impugned letter dated 20-12-2005 is only by way of clarification and not a certificate of amendment of registration of the Bye-Laws. Certificate of Amendment of Registration dated 1-3-2004 is a certificate granted in terms of sub-section(8) of Section 11 of the Act.

19. If at all any of the three certificates of amendment of registration dated 30-9-2002, 21-1-2003 and 1-3-2004 are to be considered and treated as null, void and non est, that can be done by testing them on the same anvil and by applying the same tests, though this is only an academic exercise in the sense their validity has not been questioned at any time by the parties nor is it

directly questioned in these proceedings except orally.

20. Admittedly when the elections to the present Board of Directors took place on 25-1-2003 the bye-laws registered by Certificate of Registration of Amendment dated 21-1-2003 were in force and which provided for a tenure of 3 years. This was done by cancelling the Certificate of Registration of Amendment dated 30-9-2002, and registering the Bye-Laws enblock again, as sent on behalf of the Respondent-Bank by their letter dated 17-6-2002.

21. On behalf of the Petitioners, it is contended that the Certificate of Registration of Amendment dated 1-3-2004 was proposed by the Respondent-Bank vide their letter dated 25-11-2003 and this is a Certificate of Registration approved by the Respondent-Central Registrar in exercise of his statutory powers conferred upon him under Section 11(7) of the new Act. On behalf of the Petitioners, it is contended that the challenge in the Petition is essentially to the impugned letter dated 20-12-2005(at page 38 of the Paper Book) issued by the Director(Co-operation) whereby the term of Office of the present Board of Directors is increased to 5 years in defiance of the said Certificate of Registration of Amendment dated 1-3-2004 and also in defiance of sub-section(5) of Section 45 of the new Act as it goes completely contrary and against the registered Bye-Laws of the Respondent-Bank. The Petitioners contend that there is no power in the Director(Co-operation), even assuming that there was approval of the Central Registrar, to change the Bye-Laws as approved by the Certificate of Registration of Amendment dated 1-3-2004 in that

manner and also because the said letter goes clearly contrary and is issued in defiance of sub-section(5) of Section 45 of the new Act.

22. On the other hand, it is contended on behalf of the Respondents, that the Certificate of Registration of Amendment dated 1-3-2004 is null, void and non est because it hangs on or was provoked by the purported cancellation of Certificate of Registration dated 30-9-2002 by purported Certificate of Registration dated 21-1-2003 which itself is a nullity. It is contended that there can be no acquiescence, estoppel or waiver or any other principle of equity against nullity. It is the contention of the said Respondents that there would have been no occasion to propose amendments to the Bye-Laws to provide for a term of 5 years for the Board of Directors after 21-1-2003 and have them registered on 1-3-2004 as the Bye-Laws in force on 1-3-2004 were the Bye-Laws registered on 30-9-2002, the purported cancellation of the Bye-Laws on 21-1-2003 being null, void and non est. It is the contention of the said Respondents that the orders which are null, void and non est need not be challenged or set aside and that they can be ignored and the invalidity of such null and void orders can be set up wherever they are sought to be enforced even at the stage of execution or collateral proceedings. On behalf of the Respondents reliance has been placed, interalia, on the cases of **Harshad C. Lal Modi** v. **DLF Universal Ltd**.((2005) 7 SCC 791), **R. Sulochana Devi** v. **D. M. Sujatha and others**((2005) 9 SCC 335) and **Hasham Abbas Sayyad** v. **Usman Abbas Sayyad and others**(2007(2) SCC 355).

23. In the case of **Harshad C. Lal Modi** v. **DLF Universal Ltd.**(supra) the Apex Court relied upon **Bahrein Petroleum Co. Ltd.** v. **P. J. Pappu**((1966) 1 SCR 461) and stated that the Court had held neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit and that it is well settled that "where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a Court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings and a decree passed by a Court without jurisdiction is a coram non judice. In para 33 of the learned Judgment the Apex Court referred to the case of **Kiran Singh** v. **Chaman Paswan**(AIR 1954 SC 340) and stated thus:-

> "It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction ... strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties".

24. In **R. Sulochana Devi** v**. D. M. Sujatha and others**(supra) the Apex Court stated that when an order is a nullity it can be ignored and the

question of filing a review does not arise. The Apex Court further stated that when the order passed by an authority is not in accordance with law and no notice was communicated to the party, it is a nullity and need not be challenged in a Court of law. In para 24 of the learned Judgment, the Apex Court stated that an order made without hearing the party affected is also bad in law and an order made in violation of natural justice is void. In **Hasham Abbas Sayyad** v. **Usman Abbas Sayyad and others**(supra) the Apex Court addressed to the core question in that case which was whether an order passed by a person lacking inherent jurisdiction would be a nullity and stated that it will be so. The Apex Court further stated that the principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a Court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be given effect to.

25. The Certificate of Registration of Amendment dated 1-3-2004 was granted by the Central Registrar pursuant to the change in the Bye-Laws made providing for a tenure of 5 years and communicated to the Central Registrar vide communication dated 25-11-2003. We are unable to accept the contention that the Certificate of Registration of Amendment of Bye-Laws dated 1-3-2004 is null and void or non est. No doubt the Bye-Laws proposed and communicated vide letter dated 25-11-2003 provided for a tenure of 5 years but the Central Registrar in his wisdom thought to approve the same with a tenure of 3 years as

far as the present Board of Directors is concerned and 5 years in case of future Board of Directors. That might have been a wrong order in the Respondents' opinion but it ought to have been challenged by the Respondent Nos.5 to 20 by procedures known to law and the same could not have been corrected unilaterally by way of a clarification as sought to be done by the impugned clarification dated 20-12-2005.

26. The Certificate of Registration of Amendment dated 21-1-2003 is also sought to be challenged, on behalf of the said Respondents, on the ground that the Central Registrar suo motu could not have cancelled the registration of amendment earlier granted by Certificate of Registration dated 30-9-2002 and also on the ground that the said cancellation and the certificate of amendment dated 21-1-2003 was effected in breach of the principles of natural justice and fair play as no hearing or opportunity to show cause was shown to the Respondents whose term was brought down from 5 years(as per Certificate of Registration dated 30-9-2002) to 3 years, as per Certificate of Registration dated 21-1-2003. On this second ground, it is submitted on behalf of the Petitioners, and in our view rightly, that this submission is not tenable as on 21-1-2003 there was no Board of Directors existing for the Bank and the Bank was under an Administrator and this fact has been admitted by the Respondent-Bank in their affidavit dated 20-2-2006 stating that the administration of the Respondent-Bank was vested in the Committee of Administrators headed by Shri P. Krishna, IAS appointed by the Central Registrar. The elections to the present Board of Directors took place on 25-1-2003 and they took charge on

31-1-2003 and that being the factual position there was no question of the present Board of Directors having been given an opportunity before the said Certificate of Registration of Amendment was made on 21-1-2003 which according to the Central Registrar was made in order to bring the situation back all over the country to the stage prevailing on 30-9-2002 i.e. to provide for a term of 3 years for the Board of Directors. On the first ground, it is submitted on behalf of the Petitioners, and again in our view rightly, that the Certificate of Registration dated 21-1-2003 was required to be challenged by the Respondent-Bank or by any of the Members of the Board of Directors. On the contrary the Respondent-Bank itself accepted the cancellation without any protest and thereafter by their letter dated 25-11-2003 sought a tenure of 5 years by sending a fresh proposal of Bye-Laws and which proposal was accepted and approved by Certificate of Registration dated 1-3-2004 and as far as the tenure of the present Board of Directors is concerned, for a period of 3 years and not only that the Respondent-Bank acted on the said Certificate of Registration dated 21-1-2003 informing the Central Registrar vide its letter dated 9-1-2005 that the elections to the Board of Directors were due on or before 31-1-2006 as their tenure of 3 years was expiring on 31-1-2006. We are inclined to accept the contention of the Petitioners, that they were not required to challenge the Certificate of Registration dated 30-9-2002 since this certificate was cancelled by the Central Registrar suo motto by a subsequent Certificate of Registration dated 21-1-2004 and therefore there was no occasion for the Petitioners at any point of time earlier, before filing the Petition to have challenged the said Certificate dated 30-9-2002 as it was non existent, as it was cancelled by the

Central Registrar. It is submitted on behalf of the Petitioners that it was for the Respondents to have challenged the Certificate of Registration dated 21-1-2004 as well as Certificate of Registration dated 1-3-2004 by which the tenure of the present Board was fixed for 3 years and the Respondents-Board of Directors could not have taken a stand merely by stating that the said orders were non est or null and void. It is the submission of the Petitioners that in case such an approach is accepted in relation to the orders passed by the Central Registrar or the Certificate of Registration granted by him it is bound to create chaos and confusion. It is also the submission of the Petitioners that the tenure of the present Board of Directors could be that as fixed by the Certificates of Registration dated 21-1-2004 and 1-3-2004, the Board of Directors not having challenged the same. On behalf of the Petitioners reliance has been placed on **State of Punjab and others** v. **Gurdev Singh** ((1991) 4 SCC 1) and **State of Kerala** v. **M. K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil and others**((1996) 1 SCC 435). Before referring to the aforesaid two decisions, we would like to refer to what Sir William Wade has got to say as regards void orders in his Administrative Law, Eighth Edition:-

> "An act or order which is ultra vires is a nullity, utterly without existence or effect in law. That is the meaning of 'void', the term most commonly used. In several decisions the House of Lords has made it clear that 'there are no degrees of nullity' and that errors such as bad faith, wrong grounds, and breach

> of natural justice all necessarily involve excess of jurisdiction and therefore nullity".
>
> "The truth is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results".
>
> "The problems of nullity should be soluble by the formulation of principles and by their logical application, not by abandoning the field to free discretion".

Referring to Lord Radcliffe Sir William Wade says:

> "An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders".
>
> "This must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can

> effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly and stated it leads to confusion to use such terms as 'voidable', 'voidable ab initio, 'void' or 'a nullity' as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a Court of competent jurisdiction.

The learned author further observed that to the same effect is the statement by Lord Irvine LC.

> “The question whether unlawful administrative acts were void or merely voidable became a source of confusion in the period when landmark decisions were revitalising administrative law. Historically there was a sound basis for this distinction. But it is now obsolete, the House of Lords having written its obituary notice decisively”.
>
> “That distinction no longer survives since the House of Lords declared all error of law to be ultra vires”.
>
> Thus today, the old distinction between void and voidable acts on which Lord Denning relied ... no longer applies.
>
> “The order of a superior Court, such as the High Court, must always be obeyed, no matter what flaws it may be thought to contain. Thus a party who disobeys

> a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit".

27. Making of the bye-laws is a function entrusted to a Multi State Co-operative Society, in terms of Section 10 of the new Act. An amendment Certificate is granted by the Central Registrar in terms of sub-section (7) of Section 11 of the new Act and it is granted, as can be seen from sub-section (1) thereof on the basis of the bye-laws framed by Multi-State Co-operative Society. In fact, sub-section (1) of Section 11 stipulates that no amendment of any bye-law of a Multi-State Co-operative Society, shall be valid unless such amendment has been registered under this Act. Sub-section (7) of Section 11 further provides that an application for registration of amendment of any bye-law, would be granted in case the Central Registrar is satisfied that the proposed amendment (a) is not contrary to the provisions of the said Act or of the Rules; (b) does not conflict with co-operative principles; and (c) will promote the economic interests of the members of the Multi-State Co-operative Society.

28. There can be no doubt that in registering the bye-laws sent by a Multi-State Co-operative Society, the Central Registrar performs a statutory function, may be administrative or executive in nature, as

opposed to a judicial function. Nevertheless, the registration can be done only on the basis of the bye-law framed by a Multi-State Co-operative Society and sent for his approval and registration and in case such a bye-law is framed providing a tenure to its Board of Directors of three years, there is no power in the Central Registrar to register such a bye-law on his own giving the Board of Directors a tenure of five years. In doing this, he would be usurping the powers given to a Multi State Co-operative Society. Looked from this angle, the Registration Certificate dated 30.09.2002, has got to be considered as void for want of jurisdiction. This Registration Certificate dated 30.09.2002 is fundamentally defective or patently illegal in that the Central Registrar had no power or jurisdiction to register the bye-law/s for a tenure longer than asked for. We are unable to agree that the error committed by the Central Registrar was only procedural as contended on behalf of the said Respondents. However, the Certificate dated 30.09.2002 was cancelled and replaced by Certificate dated 21.01.2003.

29. However, the same thing could not be said regarding the Certificate dated 21.01.2003.

30. Admittedly, Section 11 of the new Act does not provide for cancellation of Registration once granted to the bye-laws of the

respondent-Bank. Otherwise also, there is no specific provision in either of the Acts and no such provision has been brought to our notice which could specifically empower the Central Registrar to cancel the Registration once granted. No such power could be claimed by implication. A statutory authority cannot act beyond its frame work and must confine its powers and activities within the four corners of the Statute within which it is functioning. We have no hesitation to accept the submissions of the learned Senior Counsel that the Central Registrar is a creature of the Statute and cannot exercise powers expressly not conferred and as such hold that there was no power in the Central Registrar to suo motu cancel the Registration Certificate dated 30.09.2002 and restore the tenure of Board of Directors to three years. Nevertheless, we must observe that the Certificate dated 21.01.2003 was otherwise referable to the bye-laws sent for registration vide letter dated 17.06.2002, proposing a tenure of three years and was also within his powers which he continued to have, by virtue of sub-section (4) of Section 126 of the new Act, the explanation given by the Central Registrar notwithstanding. To that extent, the Certificate dated 21.01.2003, could not be said to be patently or fundamentally illegal. The cancellation was wrong but had to be challenged by taking appropriate proceedings. The same thing could be said of Certificate dated 01.03.2004, which was also required to be challenged. However, the Bye-laws once registered with a particular

tenure, could not be clarified as sought to be done. The clarification dated 20.12.2005 is beyond the powers of the Central Registrar. The law on the subject as regards administrative orders, statutorily made, whether void or voidable is different.

31. In ***Rafique Bibi v. Sayed Waliuddin ([2004] 1 S.C.C. 287)***, the Apex Court stated that two things must be clearly borne in mind. Firstly, the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be “a nullity” and “void” but these terms have no absolute sense; their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results. Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit. The Supreme Court also noted that a decree suffering from illegality or irregularity of

procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

32. In ***Nawabkhan Abbaskhan v. State of Gujarat (AIR 1974 S.C. 1471)***, the Apex Court noted that voidable acts are those that can be invalidated in certain proceedings; these proceedings are especially formulated for the purpose of directly challenging such acts ...On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon. In other words, it is subject to "collateral attack". The Apex Court then observed that illegal acts of authorities, if can be defied on self-determined voidness, startling consequences will follow. The Apex Court also noted that the law in this area was full of alarming conundrums hardly resolved by academic writing

or judicial dicta. It also took note of the fact that American case law was conflicting and doubtful expressions like “void on its face” “transparently invalid” were used and that English Judges had also not been uniform. Thereafter, the Apex Court stated that “*the legal chaos on this branch of jurisprudence should be avoided by evolving simpler concepts which work in practice in Indian conditions. Legislation, rather than judicial law-making will meet the needs more adequately. The only safe course, until, simple and sure light is shed from a legislative source, is to treat as void and ineffectual to bind parties from the beginning any order made without hearing the party affected if the injury is to a constitutionally guaranteed right. In other cases, the order in violation of natural justice is void in the limited sense of being liable to be avoided by court with retroactive force*.”

33. That should also take us to the decision rendered by three learned Judges of the Apex Court in the ***State of Punjab & Ors. v. Gurdev Singh ([1991] 4 S.C.C. 1)***, on which reliance has been placed on behalf of the petitioners. That was a case where a suit for declaration was filed by a dismissed employee and the Apex Court observed that :

> “For the purpose of this case, we may assume that the order of dismissal was void, inoperative and ultra vires, and not voidable. If an act is void or ultra vires

it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not "quash" so as to produce a new state of affairs. "

8. But nonetheless, the impugned dismissal order has at least a de facto operation, unless and until it is declared to be void or nullity by a competent body or Court."

From ***Smith v. East Elloe Rural District Council (1956 AC 736)***, the Court took note of the observation of Lord Radcliffe:

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of Orders."

The Apex Court then referred to Professor Wade and reiterated what he stated:

"The principle must be equally true even where the

“brand” of invalidity is plainly visible; for there also the Order can effectively be resisted in law only by obtaining the decision of the Court.”

The Apex Court further referred to Professor Wade, who had summed up the principles as follows:

“The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because has has waived his rights, or for some other legal reason. In any such case, the “void” order remains effective and is, in reality valid. It followed that an order may be void for one purpose and valid for another and that it may be void against one person but valid against another.”

The Supreme Court then held that ;

“It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time

> limit expires, the Court cannot give the declaration sought for."

34. In ***State of Kerala v. M. K. Kunhikannan Nambiar Manjeri Manikoth, Nadubil & Ors. (1996 (1) S.C.C. 435)***, the Apex Court stated thus:

> "In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an Order will, in fact, be effective inter partes unless it is successfully avoided or challenged in a higher forum. Mere use of the word in "void" is not determinative of its legal impact. The word "void" has a relative rather then an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise."

35. The Apex Court then referred to ***Halsbury's Laws of England 4th Edn., page 31, and also to Judicial Review of Administrative Action, De Smith, Woolf and Jowell, 1995 Edition at Page 259-60***, wherein the law was stated thus:

"The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The Courts have become increasingly impatient with the distinction, to the extent that the situation today could be summarized as follows:

(1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a Court of competent jurisdiction."

Referring to ***Wade and Forsyth in Administrative Law, 7th Edition, 1997 at pages 341-342***, the Supreme Court stated:

"... every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law."

The Apex Court then referred to a well known passage of ***Lord Radcliffe***:

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause

> of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'
>
> "This must be equally true even where the "brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the Court. The necessity of recourse to the Court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects."

36. What follows from the above three decisions of the Apex Court is that the respondents-members of the Board of Directors could not ignore the Certificates of Registration particularly dated 21.01.2003 or 01.03.2004 and they were bound by the same, having not challenged the same in appropriate proceedings.

37. Admittedly, the Central Registrar enjoys a pivotal place in the scheme of new Act. He registers the bye-laws sent to him as per Section 11(7) of the new Act. He has also been entrusted with other powers to which no reference is required to be made for the purpose of this petition. If the Multi State Co-operative Societies are allowed to flout his orders with the specious pleas that they are void and therefore they could ignore the same, chaos and confusion is bound to set in in the administration of

Multi State Co-operative Societies. As stated by Justice Frankfurter "*If one man can be allowed to determine for himself what is law, every man can. That means first chaos then tyranny.*" Again, as observed by the Apex Court in ***Nawabkhan Abbaskhan v. State of Gujarat*** (supra), "*illegal acts of authorities, if can be defied on self determined voidness, startling consequences will follow*". The respondents-Members of the Board of Directors were certainly required to assail the Registration Certificate dated 01.03.2004 and prior to that dated 21.01.2003, even if the latter Registration Certificate was as per them without jurisdiction. In our view, it is only the first registration dated 22.09.2002, which was beyond powers and jurisdiction of the Central Registrar but for whatever reasons it may be, the same was corrected by issuing another registration dated 21.01.2003, and that held the field on 25.01.2005, when the present Board of Directors were elected and, therefore, they would be governed by the same. The Registration Certificate dated 01.03.2004, was issued by the Central Registrar and was in conformity with the Certificate of Registration dated 21.01.2003. Having once registered the said bye-laws in terms of sub-Section (7) of Section 11 of the new Act, rightly or wrongly, the Central Registrar could not have amended the same by a clarification as was sought to be done by him, by letter dated 20.12.2005. In our view, the Central Registrar had no powers or jurisdiction to issue a clarification to a Certificate of Registration once granted by him and, to that extent, the

clarification dated 20.12.2005, has got to be considered as arbitrary, unauthorized, without jurisdiction and against the bye-laws registered by Certificate dated 01.03.2004 and, therefore, deserves to be quashed and set aside.

38. We are also unable to accept the submission of learned Senior Counsel, that the clarification by letter dated 20.12.2005 is referable to Section 12 of the new Act to bring amendments to bye-laws of a Multi State Co-operative Society into operation from a date different from the date of Registration. Section 12 of the new Act deals with a date when amendments of bye-laws come into force and provides that an amendment of the bye-laws of a Multi State Co-operative Society shall, unless it is expressed to come into operation on a particular day, come into force on a day which it is registered. In our view, once the bye-laws sent for registration were registered by the Central Registrar with a three years tenure by Certificate of Registration dated 01.03.2004, there was no question of extending the said date by a clarification. Reliance placed in this context on Section 14 of the General Clauses Act, 1897 is wholly misplaced. Section 14 provides that where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires. Section 14 deals with

the exercise of a power successively and when necessary. It grants statutory recognition to a well known rule of construction that when a power is conferred by a Statute that power may be exercised from time to time when occasion arises unless a contrary intention appears. Here, an occasion to exercise that power, in case Section 14 was applicable, would have arisen only if there was another set of bye-laws sent for registration. After registering the bye-laws with a tenure of three years, the Central Registrar could not have amended the Certificate dated 01.03.2004 by way of clarification as sought to be done by the Central Registrar. In our view, once the bye-laws were registered by the Central Registrar in terms of Section 11 (7) of the new Act, read with Section 12 of the same Act, there was no power left in him under the new Act to change the date of its coming into force. In other words, the amendment registered came into force on the day it was registered with a tenure of 3 years unless at the time of registration, it was clearly shown that it would come into operation on some other date as stipulated under Section 12 of the Act.

39. The contention that the Central Registrar cannot assail the validity of his own Order i.e. Certificate dated 30.09.2002, is wholly misplaced and so also reliance placed on ***State of Assam & anr. v. Raghvi Raj Gopalachari (1972 SLR 44)***. This is not a case where the Central Registrar has sought to assail the validity of his own order but the

Central Registrar has only explained the circumstances under which the said registration dated 30.09.2002, came to be changed by a Certificate of Registration dated 21.01.2003.

40. We are also unable to accept the contention of the learned Senior Counsel that the Registration Certificate dated 30.09.2002, is only voidable and had to be set aside by taking out appropriate proceedings. We have already indicated that the power to make bye-laws consistent with the Act is that of Multi State Co-operative Society as provided by Section 10 of the new Act and that of registration so as to give them validity is that of the Central Registrar in terms of Section 11 of the new Act. The Central Registrar could have only registered the bye-laws as sent to him for his approval by the Multi State Co-operative Society provided that they were in conformity with what is provided by sub-Section (7) of Section 11 of the Act. The Central Registrar certainly could not have given a tenure to the Board of Directors which was not asked for in terms of the bye-laws and having done so, his action in registering the bye-laws vide Certificate dated 30.09.2002, has got to be considered as void. There was no question of the petitioners taking out any proceedings to challenge the validity of the said Certificate dated 30.09.2002 since the same was rightly or wrongly replaced by the Central Registrar by Certificate of Registration dated 21.01.2004, which held that the field at the time when

the elections were held for the present Board of Directors.

41. Even otherwise, from whatever angle one looks at the case of the respondent-Members of the Board of Directors, they cannot have tenure of more than three years beyond 25.01.2006. The Board of Directors of respondent-Bank always had a tenure of three years even before the proposal was sent on 17.06.2002, to register the bye-laws with a tenure of three years. The Certificate dated 30.09.2002, was inherently without jurisdiction and was otherwise corrected by Certificate dated 21.01.2003, which was in force on the day the present Board of Directors was elected. The Certificate of Registration dated 01.03.2004 was issued pursuant to the bye-laws framed after the present Board took over but the bye-laws were registered by the Central Registrar with a tenure of three years. Even assuming that the Central Registrar could not have granted the Certificate of Registration dated 21.01.2003, setting aside the said Certificate would amount to reviving a certificate which was granted inherently without jurisdiction i.e. the Certificate dated 30.09.2002 and this Court in writ jurisdiction would certainly not revive an illegality by setting aside Certificate dated 21.01.2003 and restore Certificate dated 30.09.2002, as held by the Apex Court in the case ***Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & Ors. ([1999] 8 S.C.C. 16)***.

42. In conclusion it may be stated that the tenure of the present Board of Directors was of 3 years as per bye-laws registered by Certificate dated 21.01.2003, which was in force on the date they were elected and subsequently by Certificate dated 01.03.2004 and they were bound by the same, they not having challenged the same by procedures known to law. The Central Registrar having registered the bye-laws by Certificate dated 01.03.2004 with a tenure of 3 years for the present Board of Directors, could not enlarge the said tenure by way of clarification as sought to be done by him by letter dated 20.12.2005, which is arbitrary, illegal and unauthorized.

43. Consequently, the petition deserves to succeed. The letter dated 20.12.2002, is hereby quashed and set aside in terms of prayer (a) of the petition. The respondents-Members of the Board of Directors of the respondent-Bank, are managing its affairs beyond 31.01.2006 without authority of law. Therefore, we deem it appropriate to appoint the Chief Executive Officer of respondent-Bank to be its administrator forthwith, in terms of prayer (c) of the petition till such time elections are held for a new Board of Directors. We further direct the Central Registrar to start the process of holding the elections to the Board of Directors of the respondent-Bank, within a period of three weeks from today, in terms of prayer (b) of the petition. The petitioners are at liberty to forward a copy of

this Judgment to the Registrar of Co-operative Societies, Panaji, so that appropriate action is taken for holding the elections at the earliest.

44. Petition allowed. Rule made absolute on the above terms. No order as to costs.

45. At this stage, Mr. R. Rivonkar, learned Counsel on behalf of the Respondent Nos.5, 6, 7, 9, 10 and 11 prays for the stay of the operation of this Judgment. Mr. A. N. S. Nadkarni, learned Counsel on behalf of the Petitioner opposes the same. Considering the facts and circumstances discussed herein above, we do not propose to grant any stay of the Judgment. Prayer for stay rejected.

S. A.BODBE, J.

N. A. BRITTO, J.

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